TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 1122.

THE CITY OF SHREVEPORT, LOUISIANA, PLAINTIFF IN ERROR,

vs.

JOHN B. CROOKS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 7, 1897.

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INDEX.

	Original.	Print.
Petition in No. 110	1	1
Petition for removal in No. 110	5	3
Petition in No. 112	9	4
Petition for removal in No. 112	13	6
Plea of prescription	16	8
Answer	17	8
Judgment	19	9
Statement of facts	20	10
Petition for writ of error	27	13
Bond (copy)	29	14
Citation (copy)	31	15
Writ of error (copy)	32	15
Agreements of counsel	34	16
Bond (original)	37	17
Citation (original)	41	18
Opinion	43	19
Minutes of court	63	28
Certificate to record	67	29
Writ of error (original)	69	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 10, 1887.

1 *Petition.*

To the honorable the judges of the first judicial district of the State of Louisiana, holding sessions in and for the parish of Caddo:

The petition of John B. Crooks, a resident of Fulton, Arkansas, and a citizen of the State of Arkansas, with respect represents that the city of Shreveport, a municipal corporation created by the State of Louisiana, situated in the parish of Caddo, in said State, and a citizen of said State of Louisiana, is justly indebted to him in the sum of two thousand dollars, with eight per cent. per annum interest thereon from the 1st day of October, A. D. 1869, until paid, for this, viz:

On the 3rd day of June, A. D. 1869, the said city, in order to raise means for making improvements upon its streets, wharves, etc., through its council enacted an ordinance providing for the issuance of two hundred bonds of said city, each for the sum of one thousand dollars, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date, and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds, and also for a sinking fund out of which to pay said bonds as they matured; all of which will be seen by reference to an authentic copy of said ordinance, hereto annexed as part hereof, marked "A."

Petitioner avers that thereupon said bonds were engraved, prepared, and signed by officers of said city in accordance with

2 the requirements of said ordinance.

Petitioner avers further that subsequently and by various ordinances of its council said city provided for the improvement of its streets, avenues, wharves, etc., and particularly for the improvement of Commerce, Milam, Crockett, and Texas streets, Texas avenue, and of the wharf of said city, and entered into contracts with divers persons—among others, M. Baer, William Robson, D. J. Elder, the Shreveport City Railroad Company, and with various other citizens and property-holders of said city—to have said improvements made at a stipulated price; all of which is shown by authentic copies of said ordinances and contracts, hereto annexed as part hereof.

Petitioner avers the improvements and work so contracted for were made and was done by said contractors, were accepted by said city, enured greatly to its benefit, and were well worth the amount which the city had bound itself to pay therefor.

Petitioner avers further that the said city, in evidence of its indebtedness for said work and improvements so as aforesaid done and made, issued and gave to the said M. Baer, Wm. Robson, D. J. Elder, the Shreveport City Railroad Company, and other citizens a number of said bonds so as aforesaid authorized by said ordinance of June 3, 1869, and among others, bond Nos. 49–55, which are hereto annexed and made part hereof.

3 Petitioner avers that said bond originally issued to the Shreveport City R. R. Co. was by said company transferred & assigned for a valuable consideration before maturity and in

due course of commercial transactions; that for several years said city paid to any holder of said bond the interest due thereon, and by many ordinances repeatedly recognized its indebtedness as herein set forth, and that he, your petitioner, acquired said bond for a valuable consideration and is now holder and owner of same.

Petitioner alleges that all the ordinances and contracts of the city hereinbefore referred to were legally and properly enacted and entered into after full compliance with all the requirements of law.

He avers further that the obligation of said city to pay its indebtedness as hereinbefore set forth was confirmed and fixed by the charters of said city granted by the State of Louisiana A. D. 1871 and A. D. 1878.

Petitioner alleges amicable demand in vain, and that the city has failed and refused to pay its indebtedness evidenced by said bond and remains indebted for the work done by said company as hereinbefore set forth, and that he (petitioner) is subrogated to all the rights and actions of said company against said city.

Petitioner alleges further that the laws of the State of Louisiana, so far as — same had any bearing on or relation to the contracts hereinbefore set up and to the rights and obligations therefrom resulting, were, by implication and operation of law, a part of
4 said contracts, and there was an implied contract between said city and the contractors that in event of a failure on the part of the city to comply with the terms of said contract the obligations thereof might be judicially enforced through the means and by the remedies then existing.

Petitioner avers that the law of Louisiana at the date of said contract provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but petitioner alleges that article 209 of the constitution of Louisiana, adopted July 23, A. D. 1879, has impaired the obligation of said contracts by destroying all remedies for the enforcement of same, in this, viz., by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

Petitioner avers that it is claimed by said city that the entire revenues of said city under the operation of said constitutional limitation are not more than sufficient for its alimony, and petitioner avers that in consequence of such limitation no means exist under the law of Louisiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts.

Petitioner alleges said article 209, so far as it limits municipal taxation, is, as to him, null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

Petitioner avers he is entitled to have said article 209 declared null and void, so that he may have a remedy by means of which to compel said city to pay its indebtedness to him.

5 The premises considered, he prays that the city of Shreveport be cited to answer hereto; that, after all legal notices and delays, he have judgment against said city declaring said article 209 of the constitution of Louisiana — violation of the Constitu-

tion of the United States, null and void, and condemning said city to pay him the sum and interest herein claimed, with costs.

He prays for all orders and decrees necessary and for general relief in the premises.

(Sig.) A. H. LEONARD, *Att'y.*

Petition for Removal.

THE STATE OF LOUISIANA, *Parish of Caddo:*

In the First Judicial District Court.

JOHN B. CROOKS *vs.* THE CITY OF SHREVEPORT.

To the hon. judge of said court:

Your petitioner, John B. Crooks, respectfully shows that he is the plaintiff in the above-entitled suit; that same was commenced by him on or about the 3rd day of July, A. D. 1886, in said court, and that he was at the time of bringing the same and still is a citizen of the State of Arkansas and a resident thereof.

Petitioner shows that there is and was at the time said suit was brought a controversy therein between him and said defendant, then and now a citizen of the State of Louisiana and resident thereof, and that the matter in dispute in their suit exceeds the sum of five hundred dollars, exclusive of costs.

That he has reason to believe and does believe that from local influence or prejudice he will not be able to secure justice by
6 reason of such local influence or prejudice.

That the said controversy raises a Federal question, the determination of which depends upon the construction of the Constitution of the United States.

That said cause can be fully and finally determined in the United States circuit court for the western district of Louisiana.

Your petitioner further represents that the suit has not been tried, but is pending in the said district court of said State of Louisiana, and that this petition is presented and filed in said court at the term at which said cause could be first tried and before the trial thereof.

Your petitioner further shows that he desires to remove said suit into the circuit court of the United States for the western district of Louisiana in pursuance of the acts of Congress in that behalf provided.

Your petitioner further shows that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, with Leon M. Carter, of Shreveport, La., as surety thereon, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

Your petitioner prays that said bond be accepted as good and sufficient, and that the said suit may be removed into the next circuit court of the United States in and for the said western district

of Louisiana, pursuant to the acts of Congress in such cases
7&8 made and provided, and that no further proceedings may be had therein in this court; and your petitioner will ever pray, etc.

(Sig.) A. H. LEONARD,
Attorney for Petitioner.

Oath of Attorney.

UNITED STATES OF AMERICA,
The State of Louisiana, First Jud'l District of Louisiana:

JOHN B. CROOKS *vs.* THE CITY OF SHREVEPORT.

I, —— ——, being sworn, depose — say that I am the attorney-at-law for John B. Crooks, plaintiff in said cause, now pending in the 1st judicial district court, parish of Caddo, State of Louisiana; that said plaintiff is now absent from the State of Louisiana; that the contents of the above petition in said suit are true, and that I have reason to believe and do believe that from prejudice and local influence the said plaintiff will not be able to obtain justice in said State court.

(Sig.) A. H. LEONARD.

Subscribed and sworn to before me this — day of July, A. D. 1886.

(Sig.) —— ——.

(Endorsement:) No. 110. U. S. circuit court. John B. Crooks *vs.* The City of Shreveport. Filed July 14th, 1886. E. J. Nolan, d'y clerk.

9 *Petition.*

To the honorable the judges of the first judicial district of the State of Louisiana, holding sessions in & for the parish of Caddo:

The petition of John B. Crooks, a resident of Fulton, Arkansas, and a citizen of the State of Arkansas, with respect represents that the city of Shreveport, a municipal corporation created by the State of Louisiana, situated in the parish of Caddo, — said State, and a citizen of said State of Louisiana, is justly indebted to him in the sum of three thousand dollars, with eight per cent. per annum interest thereon from the 1st day of October, A. D. 1869, until paid, for this, viz: On the 3rd June, A. D. 1869, the said city, in order to raise means for improvements on its streets, wharves, and for other necessary improvements, through its council enacted an ordinance providing for the issuance of two hundred bonds of said city, each for the sum of one thousand dollars, bearing interest at the rate of eight per cent. per annum, payable to bearer ten years after date, and also providing for levying and collecting annually a tax sufficient to pay the interest on said bonds, and also for a sinking fund out of which to pay said bonds as they matured; all of which will be seen by reference to an authentic copy of said ordinance, hereto an-

nexed as part hereof, marked "A." Petitioner alleges that thereupon said bonds were engraved, prepared, and signed by officers of said city, in accordance with the requirements of said ordinance. Petitioner avers that subsequently and by various ordinances of its council said city provided for the improvement of its streets, avenues, wharves, etc., etc., and, among other improvements, for
10 the purchase of a tract of land to be used as a city park; all of which is shown by authentic copies of said ordinances, hereto annexed.

Petitioner alleges that on the 30th day of May, A. D. 1870, the said city purchased from the succession of Samuel Bennett, deceased, ten-acre lot number seven, situated within the corporate limits of said city, for the sum and price of twelve thousand dollars, in which amount said city became indebted to said succession, and in evidence thereof gave to the legal representatives of said succession twelve of the bonds so as aforesaid issued, numbered from 1 to 12, inclusive; that said bonds were by party to whom originally issued transferred & assigned before maturity for a valuable consideration and in due course of commercial transactions; that for several years said city paid to any holder of said bonds the interest due thereon, and by many ordinances repeatedly recognized its indebtedness as herein set forth, and that he, your petitioner, acquired bonds Nos. 1, 8, 9, which are hereto annexed, for a valuable consideration, and is now holder & owner of same.

Petitioner alleges that said city purchased said property in order that same might be used as a city park, and that to secure payment of the amount so as aforesaid due to him by said city he has the vendor's lien & privilege on the property so as aforesaid sold to the city by said succession.

Petitioner alleges further that said city is indebted to him
11 in the further sum of two hundred & seventy dollars, with legal interest from judicial demand, for this, viz., that in event of suit to enforce payment of said bonds the city contracted and bound itself to pay five per cent. on the amount sued for for attorneys' fees; all of which is shown by authentic copy of act of sale from the succession of Samuel Bennett to the city of Shreveport, hereto annexed as part hereof.

Petitioner alleges that all the ordinances and contracts of the said city hereinbefore referred to were legally and properly enacted and entered into after full compliance with all the requirements of law. He avers that the obligation of said city to pay its indebtedness, as hereinbefore set forth, was confirmed and fixed by the charters of said city, granted by the State of Louisiana A. D. 1871 and A. D. 1878.

Petitioner alleges amicable demand in vain, and that the city has failed and refused to pay its indebtedness evidenced by said bonds, and remains indebted for said ten-acre lot, hereinbefore set forth, and that he, your petitioner, is subrogated to all the rights & actions of the succession of Samuel Bennett against said city.

Petitioner alleges further that the laws of the State of Louisiana, so far as same had any bearing on or relation to the contracts herein-

before set up and to the rights and obligations therefrom resulting, were by implication and operation of law a part of said contracts, and there was an implied contract between said city & the vendor of said property that in the event of a failure on the part of
12 the city to comply with the terms of said contract the obligations thereof might be judicially enforced through the means and by the remedies then existing.

Petitioner represents that the law of Louisiana at the date of said contract provided sufficient means and adequate remedy for the enforcement of all rights thereunder arising, but petitioner alleges that article 209 of the constitution of Louisiana, adopted July 23rd, A. D 1879, has impaired the obligations of said contract by destroying all remedy for the enforcement of same, in this, viz., by limiting municipal taxation throughout said State for all purposes whatever to ten mills on the dollar of valuation.

Petitioner avers it is claimed by said city that the entire revenues of the city under the operation of said constitutional limitation are not more than sufficient for its alimony, and petitioner avers that in consequence of such limitation no means exist under the law of Louisiana by which said city can raise funds wherewith to pay or be compelled to pay its just debts.

Petitioner alleges said article 209, so far as it limits municipal taxation, is, as to him, null and void, because it violates the Constitution of the United States, which prohibits all States from passing any law impairing the obligation of contracts.

Petitioner avers he is entitled to have said article 209 declared null and void, so that he may have a remedy by means of which
13 to compel said city to pay its indebtedness to him.

The premises considered, he prays that the city of Shreveport be cited to answer hereto; that, after all legal notices and delays, he have judgment against said city declaring said article 209 of the constitution of Louisiana — violation of the Constitution of the United States, null and void, and condemning said city to pay him the sum and interest herein claimed, with costs.

Recognizing his vendor's lien and privilege, as herein claimed, and directing enforcement of same, he prays for all orders & decrees necessary & for general relief in the premises.

(Sig.) A. H. LEONARD, *Att'y.*

Petition for Removal.

THE STATE OF LOUISIANA, *Parish of Caddo:*

In the First Judicial District Court.

JOHN B. CROOKS *vs.* THE CITY OF SHREVEPORT.

To the hon. judge of said court:

Your petitioner, John B. Crooks, respectfully shows that he is the plaintiff in the above-entitled suit; that same was commenced by him on or about the 5th day of July, A. D. 1886, in said court,

and that he was at the time of bringing same and still is a citizen of the State of Arkansas and a resident thereof.

Petitioner shows that there is, and was at the time said suit was brought, a controversy therein between him and said defendant, then and now a citizen of the State of Louisiana and resident thereof, and that the matter in dispute in their suit exceeds the sum
14 of five hundred dollars exclusive of costs.

That he has reason to believe and does believe that from local influence or prejudice he will not be able to secure justice by reason of such local influence or prejudice.

That the said controversy raises a Federal question, the determination of which depends upon the construction of the Constitution of the United States.

That said cause can be fully and finally determined in the United States circuit court for the western district of Louisiana.

Your petitioner further represents that the suit has not been tried, but is pending in the said district court of said State of Louisiana, and that this petition is presented and filed in said court at the term at which said cause could be first tried and before the trial thereof.

Your petitioner further shows that he desires to remove said suit into the circuit court of the United States for the western district of Louisiana in pursuance of the acts of Congress in that behalf provided.

Your petitioner further shows that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, with Leon M. Carter, of Shreveport, La., as surety thereon, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

15 Your petitioner prays that said bond be accepted as good and sufficient, and that the said suit may be removed into the next circuit court of the United States in and for the said western district of Louisiana pursuant to the acts of Congress in such cases made and provided, and that no further proceedings may be had therein in this court; and your petitioner will ever pray, etc.

(Sig.) A. H. LEONARD,
Attorney for Petitioner.

Oath of Attorney.

UNITED STATES OF AMERICA,
The State of Louisiana, First Jud'l District of Louisiana:

JNO. B. CROOKS *vs.* THE CITY OF SHREVEPORT.

I, A. H. Leonard, being sworn, depose — say that I am the attorney-at-law for Jno. B. Crooks, plaintiff in said cause, now pending in the 1st judicial district court, parish of Caddo, State of Louisiana; that said plaintiff is now absent from the State of Louisiana; that the contents of the above petition in said suit are true, and that I have reason to believe and do believe that from prejudice and local influence the said plaintiff will not be able to obtain justice in said State court.

(Sig.) A. H. LEONARD.

Subscribed and sworn to before me this 14th day of July, A. D. 1886.

(Sig.) W. P. FORD, *Cl'k.*

(Endorsement:) No. 112. U. S. C. C. John B. Crooks *vs.*
16 The City of Shreveport. Filed July 14th, 1886. E. J. Nolan, d'y cl'k.

Plea of Prescription.

In the U. S. Circuit Court, Western District of Louisiana.

JOHN B. CROOKS
vs.
CITY OF SHREVEPORT. } No-. 110 & 112.

Now comes defendant in above cause and, as a peremptory exception, pleads the prescription of one, three, five, and ten years in bar of plaintiff's action herein.

Wherefore defendant prays that this suit be dismissed at the plaintiff's cost.

(Sig.) E. H. RANDOLPH,
ALEXANDER & BLANCHARD,
Attorneys for Defendant.

(Endorsement:) No-. 110 & 112. Jno. B. Crooks *versus* City of Shreveport. Plea of prescription. Filed July 30, '86. (Sig.) J. W. Wheaton, cl'k.

17 *Answer.*

In U. S. Circuit Court, 5th Circuit, Western District of La.

JNO. B. CROOKS
vs.
CITY OF SHREVEPORT. } Nos. 110 & 112. Consolidated.

Now comes defendant in above cause and, for answer to plaintiff's petition, denies all and singular the allegations therein contained, and specially denies pl'ff is a *bona fide* holder before maturity of the bonds sued upon.

Further answering, respondent specially denies that the city of Shreveport had any power, right, or authority to issue or put into circulation the bonds sued upon herein, and specially avers that same were issued by the trustees & officers of said city without warrant or authority of law or its charter and are absolutely null & void in law and in no manner binding upon said city.

Respondent, for further answer, alleges that even if the city had possessed the power to issue said bonds, which is denied, the said bonds are still illegal, null & void, and not binding upon said city, for the reason that at the time said bonds were made & issued and the debt contracted no provision was made in the ordinance creating the debt or means provided for the payment of the principal & interest of the debt so contracted, as required by section 2448 of the

Revised Statutes of the State of Louisiana; that said statute is prohibitory and said bonds, having been issued in contravention thereof, are absolutely null & void.

18 Further answering, respondent specially denies that there was or is any privity whatsoever between plaintiff and the contractors, who are alleged in the petition to have performed certain works under contracts with the city, or that plaintiff has any right of action against respondent for work done or labor performed by other persons, and to which contracts plaintiff herein was no party; that if any such right of action does exist on plaintiff's part, which is denied, then that said contracts were also made in violation of said prohibitory statute above referred to (sect. 2448), and were illegal, void, and in no manner binding upon the city of Shreveport.

Wherefore respondent prays that plaintiff's demand be rejected at his costs.

(Sig.) E. H. RANDOLPH,
" ALEXANDER & BLANCHARD,
Att'ys for Defendant.

(Endorsement:) Nos. 110 & 112. Jno. B. Crooks *vs.* City of Shreveport. Answer. Filed July 30, '86. (Sig.) J. W. Wheaton, cl'k.

19 *Judgment.*

U. S. Circuit Court, Western District Louisiana.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } No-. 110 & 112. Consolidated.

In this case, by reason of the law and the evidence being in favor of the plaintiff & against the defendant, and for reasons given in opinion read herein, it is ordered, adjudged, and decreed that the motion for recusation herein filed, which has been waived by defendant, be overruled, and that the plea of prescription herein filed be also overruled; and it is further ordered, adjudged, & decreed that the plaintiff, John B. Crooks, have and recover of the defendant, The City of Shreveport, the sum of two thousand four hundred dollars, with five per cent. per annum interest thereon from the 1st day of October, A. D. 1877, and the further sum of three thousand six hundred dollars, with five per cent. per annum interest from 1st Oct'r, A. D. 1877, and the further sum of two hundred & seventy dollars, with five per cent. per annum interest from July 5, 1886.

It is further ordered & decreed that the vendor's lien & privilege as claimed by plaintiff be recognized & enforced, & that defendant pay all costs of suit.

It is further ordered, adjudged, & decreed that article 209 of the constitution of Louisiana, adopted A. D. 1879, is, and is hereby declared to be, unconstitutional, null, & void, so far as same imposes a

limit on municipal taxation or in any manner affects the
20 debt due by defendant to plaintiff, which is recognized by this judgment.

Done, read, & signed in open court on this the 7th day of March, A. D. 1887.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 110 & 112, consolidated. John B. Crooks *vs.* City of Shreveport. Judgment. Filed M'ch 7th, A. D. 1887. (Sig.) J. W. Wheaton, cl'k.

Statement of Facts.

U. S. Circuit Court, Western Dist. La.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112.

By written agreement of counsel these two suits were consolidated, jury was waived, and motion for recusation abandoned & dismissed. The defendant offered no evidence.

Statement of facts on plea of prescription.—Prescription as against pl'ff's demand was interrupted by a judicial demand and citation on the 30th August, 1884, and prescription has not accrued.

21 On the merits.—Defendant is a municipal corporation.

In 1869 and 1870, in pursuance of ordinances legally enacted & promulgated, the defendant caused to be let several contracts for public works, such as grading and otherwise improving the streets and wharves of the city.

By written agreement the contractors undertaking the public works which were provided for in the ordinances were to receive from defendant for the amounts due them for work & labor done and material furnished a part in cash as the work progressed and the balance in the ten-year coupon one-thousand-dollar bonds of the city at par.

The works having been satisfactorily performed and accepted by the city, a number of such bonds were executed and given to said contractors to evidence the amount due them in accordance with the agreement of the parties. The defendant corporation has had the benefit and enjoyment of the works, & the credit price represented by these bonds has never been paid to any one.

The several contractors to whom the bonds were given transferred them by delivery before maturity for value, and plaintiff acquired and became the holder of two of said bonds for value and in due course of business.

On the 30th May, 1870, in conformity to ordinances of the
22 city previously & duly enacted, the city purchased ten-acre lot number seven, situated within the corporate limits of said city, for the price of twelve thousand dollars, for which the city executed and gave to the vendors of said property twelve ten-year coupon bonds of the city, each for one thousand dollars, bear-

ing numbers from 1 to 12, inclusive, which bonds were by the notary, before whom the act of sale was passed, paraphed *ne varietur* to identify them with the act of sale. By said act a special mortgage waiving benefit of appraisement was stipulated on said property in favor of any holder of said bonds to secure the payment of said bonds & the coupons thereto attached, and, in the event of suit on said bonds, the city bound itself to pay all costs and attorneys' fees, fixed at five per cent. on the amount sued for. The act of sale and mortgage was signed on the part of the city by the mayor of the city.

Thereupon the city took possession of said ten-acre lot number seven as owner and has ever since held & now holds possession of same as owner; said property was purchased by said city for a city park. The bonds so issued to the vendors of said property were by them transferred by delivery before maturity for value, and in the due course of business plaintiff acquired & now holds three
23 of said bonds. Up to and including the year 1877 the city levied annually a tax to provide means for paying the interest and also to provide a sinking fund for the payment of the principal of said bonds hereinbefore mentioned, and the interest was paid to any one holding them. Up to and including said year 1877 the bonds were also annually placed in the city's statement of liabilities and on its published budgets, and some of said bonds were taken up by the city.

The defendant corporation issued in the year 1866 bonds for $500.00 each, payable in five, ten, & fifteen years, respectively, and same were placed in the annual statements of the city's liabilities and in its budgets.

The following is a copy of the bonds given to said contractors and said vendors and now held by pl'ff:

"$1,000.00. $1,000.00.

"STATE OF LOUISIANA, *City of Shreveport:*

"Municipal loan for improvement and extension of the avenues of trade and other purposes.

"Know all men by these presents that the mayor & trustees of the city of Shreveport acknowledge to owe —— —— or bearer one thousand dollars, lawful money of the United States, which the said mayor and trustees promise to pay, at the controller's office,
24 in the city of Shreveport, on the 1st day of October, A. D. 1879, with interest thereon at eight per cent. per annum, payable semi-annually at the Bank of New York, in the city of New York, on presentation of the coupons hereto attached. For the performance of this obligation the faith of the corporation of Shreveport are irrevocably pledged and a tax is ordered to be levied on all the taxable property of said city annually to pay the said interest and to create a sinking fund to pay the principal when the same becomes due. This bond is issued in obedience to an ordinance of the mayor & trustees of said city, adopted on the 3rd day of June, A. D. 1869, for the purpose of raising means to make such improvements as the growth of the city demands.

"In witness whereof this bond is signed by the mayor and controller of said city of Shreveport and approved by the finance committee and the seal of the city affixed the 1st day of October, A. D. 1869.

"(Sig.) J. B. GILMORE, *Mayor.*
"(Sig.) By C. H. SPILKER, *Controller.*

"Approved:
(Sig.) THOS. H. MORRIS,
" J. C. MONCURE,
" J. N. HOWELL,
Finance Committee."

The bond bears following endorsement:

"*Bond of the City of Shreveport.*

"No. —. $1,000.00, payable Oct'r 1st, 1879. Interest at eight per cent. per annum, payable at the Bank of New York, in the city of New York, April and October.

"This bond is one of two hundred of like denomination,
25 and the ordinance under which they are issued provides for their payment as well as the payment of interest, as required by law, by setting apart from the revenues of the city the sum of thirty-six thousand dollars annually to pay said interest punctually and to create a sinking fund to pay the principal.

"The ordinance providing for the payment of the principal and interest is irrevocable until the same is fully paid.

"The ordinance providing for the interest and principal of any debt created by any board of police or authorities of incorporated towns and cities shall remain in full force until the debt and interest is paid." Acts of the State of Louisiana, session of 1855, sec. 5, page 326.

The series of bonds of which the bonds held by plaintiff are a part were issued under an ordinance of June 3rd, 1869. Sec. 4 of that ordinance is as follows:

"Be it further ordained, &c., that, in order to fully provide for the payment of the principal and interest of said bonds as the board is required to do by law, there shall be set apart from the revenues of the city semi-annually the sum of eight thousand dollars to meet the payment of the interest upon said bonds as the same becomes due; and, to meet the payment of the principal of said bonds, there shall be set apart from the said revenues the sum of twenty
thousand dollars annually as a sinking fund, and, in order
26 to raise the amount of interest as the same becomes due and the amount necessary to create the said sinking fund, it shall be the duty of the mayor and trustees of the city to levy annually upon all taxable property in the city of Shreveport such amount of tax as shall fully provide for the payment of said interest and the creation of said sinking fund, in addition to the payment of the current and ordinary expenses of the city government."

The charter of the city of Shreveport as it existed at the dates hereinbefore stated is found in several acts of the Legislature of Louisiana, viz: Act No. 67, session of 1839, page 200; act No. 190, session 1850, page 123; act No. 232, session 1853, page 198; act No. 156, session 1859, p. 120; act No. 146, session 1866, page 276.

Subsequently to said dates hereinbefore stated and by an act of the Legislature of La. approved Ap'l 27, 1871, the territory previously known as Shreveport, together with other territory, was designated the city of Shreveport, and the inhabitants constituted a body politic by the name and style of the City of Shreveport and invested with certain rights and privileges, subject to certain duties and obligations, as shown by said act.

The defendant corporation has no property subject to execution, and the revenues of the city, under the limitation on municipal taxation imposed by article 209 of the constitution of Louisiana, adopted A. D. 1879, are not more than sufficient for the
27 alimony of the city.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 110 & 112. John B. Crooks *vs.* The City of Shreveport. Statement of facts. Filed March 28, '87. (Sig.) J. W. Wheaton, cl'k.

Petition for Writ of Error.

UNITED STATES OF AMERICA,
Fifth Circuit, Western Dist. of La.:

To the justices of the Supreme Court of United States:

And now comes the city of Shreveport, a municipal corporation of the State of Louisiana, by E. H. Randolph and Alexander & Blanchard, its attorneys, and complains that in the records & proceedings and also in the rendition of judgment in suits between John B. Crooks, plaintiff, and said City of Shreveport, defendant, tried in the circuit court of the United States for said fifth circuit, western district of Louisiana, at the February term thereof,
28 1887, and in which judgment was rendered against said city of Shreveport on the 7th day of March, 1887, manifest error hath intervened, to the great damage of the said city of Shreveport.

Wherefore it prays for the allowance of a writ of error & such other process as may cause the same to be corrected by the Supreme Court aforesaid.

(Sig.) E. H. RANDOLPH,
ALEXANDER & BLANCHARD,
Att'ys for City of Shreveport.

Allowed:
(Sig.) ALECK BOARMAN, *Judge.*

(Endorsement:) Nos. 110 & 112, consolidated. John B. Crooks *vs.* City of Shreveport. Petition for writ of error. Filed March 14, '87. (Sig.) J. W. Wheaton, clerk.

29 *Bond for Writ of Error.*

Supreme Court of the United States.

JOHN B. CROOKS
vs.
CITY OF SHREVEPORT. } Nos. 110 & 112, Consolidated.

Know all men by these presents that we, The City of Shreveport and E. M. Smith and W. P. Ford, of the city of Shreveport, State of Louisiana, are held and firmly bound unto John B. Crooks, of Fulton, Arkansas, in the sum of two hundred & fifty dollars, to be paid to the said John B. Crooks, his executors or administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, & administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of March, 1887.

Whenever the above-named City of Shreveport hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the fifth circuit, western district of Louisiana, at Shreveport:

Now, therefore, the condition of this obligation is such that if the above-named City of Shreveport shall prosecute its said writ of
30 error to effect and answer all costs & damages if *he* shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force & virtue.

(Sig.) A. CURRIE, [L. S.]
Mayor of the City of Shreveport.
(Sig.) " W. P. FORD. [L. S.]
E. M. SMITH. [L. S.]

Sealed & delivered in presence of—
(Sig.) T. ALEXANDER.
" THOMAS J. LEATON.

UNITED STATES OF AMERICA,
Fifth Circuit, Western District of Louisiana:

E. M. Smith & W. P. Ford, being duly sworn, depose & say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts & liabilities.

(Sig.) W. P. FORD.
" E. M. SMITH.

Sworn to and subscribed before me this 14 day of March, 1887.
[SEAL.] (Sig.) J. B. SLATTERY,
U. S. Commissioner.

I approve the above bond and the sufficiency of the sureties therefor.

(Sig.) ALECK BOARMAN, *U. S. Judge.*

(Endorsement:) No-. 110 & 112, consolidated. John B.
31 Crooks *vs.* City of Shreveport. Bond for writ of error. Filed March 14, '87. (Sig.) J. W. Wheaton, clerk.

Citation.

UNITED STATES OF AMERICA, *ss:*

To John B. Crooks, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein The City of Shreveport is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties *at* that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this the 14th day of March, A. D. 1887.

(Sig.) ALECK BOARMAN, *Judge.*

Marshal's Return.

Rec'd this citation in office M'ch 17th, 1887, & on the 18th day of same month & year I served a certified copy of same on A. H.
32 Leonard, attorney for plaintiff (defendant in error), by leaving same in his hands in the city of Shreveport, La.

(Sig.) A. C. GIBSON,
U. S. Marshal.

(Endorsement:) 69. The City of Shreveport *vs.* John B. Crooks. Citation. Filed March 14, '87. (Sig.) J. W. Wheaton, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judge of the circuit court of the United States for the fifth circuit, western district of Louisiana, Greeting:

Because that in the records & process, & also in the rendering of judgment in a suit before you or some of you, between The City of Shreveport, La., plaintiff in error, and John B. Crooks, a citizen of Arkansas, defendant, a manifest error has intervened, to the great damage of the said plaintiff in error, as in his complaint stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should
33 be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly & openly send the record & process

in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and associate justices of the Supreme Court of the United States on the second Monday in October next, at Washington, being present seat of the National Government, that, the record & process aforesaid being inspected, they may cause thereupon to be done which of right ought to be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this the 14th day of March, in the year of our Lord 1887, and of the Independence of the United States the one hundred*th* & eleventh.

[SEAL.] (Sig.) J. W. WHEATON, *Clerk.*

(Endorsement:) No-. 110 & 112, consolidated. City of Shreveport *vs.* John B. Crooks. Writ of error. Filed March 14, '87. (Sig.) J. W. Wheaton, clerk.

34 *Agreement of Counsel.*

THE STATE OF LOUISIANA, *Parish of Caddo:*

U. S. Circuit Court, 5th Circuit, Western District La.

Agreement between the plaintiffs in various suits against the city of Shreveport and the said city, pl'ffs being represented herein by A. H. Leonard, their att'y, and defendant by their attorney-, Alexander & Blanchard and E. H. Randolph.

It is understood & agreed that the said Leonard will, on his motion, have the various suits of E. H. Carter *vs.* The City of Shreveport consolidated, so as to be in effect one suit; the various suits of John R. Holmes *vs.* Said City consolidated, so as to be in effect one suit, and the various suits of Jno. B. Crooks *vs.* Said City consolidated, so as to be in effect one suit.

That said Leonard will also take same course with regard to another suit—on eighteen bonds of said city—which will be filed to-morrow in name of E. H. Carter, & which is to be consolidated with the other suits of said Carter against said city.

It is understood & agreed that said defendant will file to-morrow morning answers in said suits and raise thereon no question as to the right of plaintiffs in said suits to sue as owners of the claims therein sued on.

It is further understood & agreed that on the issues so made a trial shall be had at the next term of the circuit court of the
35 United States for the fifth circuit & western district of Louisiana by the court, trial by jury in said causes being hereby waived, and that either party may offer in evidence the evidence adduced on the trial of the case of Simon Levy *vs.* The City of Shreveport, No. 28 on the docket of said court, or any portion thereof, and such other evidence as either party may choose to offer, subject to legal objections as to competency & admissibility.

It is further understood & ageed that in the event a writ of error is sued out from the judgment which may be rendered in said causes or

any one of them such writ of error shall have the effect of a supersedeas, provided it is sued out within the time fixed by law for suing out a writ of error to operate as a supersedeas, on a bond for an amount sufficient to cover costs; and it is further understood & agreed that in the event a writ of error is sued out in said causes or any one of them such causes or cause shall be submitted to the Supreme Court of the United States on briefs to be filed within fifteen days after the commencement of the term to which said cause is or causes are made returnable.

It is further agreed that the case Nathan Simmons *vs.* The City of Shreveport shall not be tried until after final judgment of Supreme Court in the event the other cases herein referred to are taken to said Court.

36 July 29, '86.

(Sig.) A. H. LEONARD, *Att'y for Pl'ffs.*
(Sig.) " ALEXANDER & BLANCHARD,
E. H. RANDOLPH,
Att'ys for Defendant.

Additional Agreement of Counsel.

In cases—

J. R. HOLMES *vs.* CITY OF SHREVEPORT.
J. B. CROOKS *vs.* " " "
E. H. CARTER *vs.* " " "

It is agreed that plaintiffs may offer, in addition to evidence previously adduced by them, following evidence, viz: The records in cases Simon Levy, M. A. Hackett, A. H. Leonard, Jno. J. Horan, S. Herold, John J. Gragard, J. G. McWilliams, R. T. Buckner, W. P. Ford, Leon M. Carter, Mattie L. Parsons, ex't'rs; G. W. Robinson, Kate O. Holmes, S. Herold, Mattie L. Carter, Edward Jacobs, Ben. Jacobs, J. F. Looney, R. R. Riggs, W. C. Harris, A. W. O. Hicks, & Wm. Enders *vs.* City of Shreveport, & also the citations in said cases, with return- thereon, & that said evidence shall be considered as having been offered on trial had.

(Sig.) ALEXANDER & BLANCHARD,
Att'ys for Def'd't.

(Endorsement:) Agreement of counsel. Filed July 29, '87, & Mar. 2, '87. (Sig.) J. W. Wheaton, cl'k.

37 Supreme Court of the United States.

JOHN B. CROOKS *vs.* CITY OF SHREVEPORT. } Nos. 110 & 112. Consolidated.

Know all men by these presents that we, The City of Shreveport, and E. M. Smith and W. P. Ford, of the city of Shreveport, State of Louisiana, are held & firmly bound unto John B. Crooks, of Fulton, in the State of Arkansas, in the sum of two hundred & fifty dollars,

to be paid to the said John B. Crooks, his executors or administrators; to which payment, well & truly to be made, we bind ourselves and each of us, jointly and severally, and our & each of our heirs, executors, & administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of March, 1887.

Whereas the above-named City of Shreveport hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the fifth circuit — western dis-
38 trict of Louisiana, at Shreveport:

Now, therefore, the condition of this obligation is such that if the above-named City of Shreveport shall prosecute its said writ of error to effect and answer all costs & damages if *he* shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force & virtue.

A. CURRIE, [L. S.]
Mayor of the City of Shreveport.
W. P. FORD. [L. S.]
E. M. SMITH. [L. S.]

Sealed & delivered in presence of—
T. ALEXANDER.
THOMAS J. LEATON.

UNITED STATES OF AMERICA,
Fifth Circuit, Western District of Louisiana:

E. M. Smith & W. P. Ford, being duly sworn, depose & say, and each for himself saith, that he is worth the sum of one thousand dollars over & above all his just debts and liabilities.

W. P. FORD.
E. M. SMITH.

Sworn to & subscribed before me this 14 day of M'ch, 1887.
[Seal U. S. Commissioner, Western District La.]

J. B. SLATTERY,
U. S. Commissioner.

I approve the above bond & the sufficiency of the sureties therefor.
ALECK BOARMAN, *U. S. Judge.*

39 & 40. [Endorsed:] No. 110 & 112, consolidated. John B. Crooks *vs.* City of Shreveport. 10. Bond for writ of error. Filed March 14, '87. J. W. Wheaton, clerk.

41 UNITED STATES OF AMERICA, *ss:*

To John B. Crooks, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next, pursuant to a writ of error

filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein The City of Shreveport is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties *at* that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this the 14th day of March, A. D. 1887.

[Seal U. S. Circuit Court for the Western Dist. of La.]

ALECK BOARMAN, *Judge.*

42 [Endorsed:] No. 124. C. C. The City of Shreveport *vs.* John B. Crooks. Citation. Filed March 14, '87. J. W. Wheaton, clerk.

Rec'd this citation in office M'ch 17th, 1887, & on the 18th day of same month & year I served a certified copy of same on A. H. Leonard, attorney for plaintiff (defendant in error), by leaving same in his hands in the city of Shreveport, La.

A. C. GIBSON,
U. S. Marshal.

43 *Opinion of Judge.*

U. S. Circuit Court, Western District Louisiana.

JOHN B. CROOKS
vs.
CITY OF SHREVEPORT. } No. 110 & 112.

A. H. Leonard, A. D. Laud, for plaintiff; T. Alexander, E. H. Randolph, for defendant.

By agreement, jury waived and the two cases consolidated.

The pleading, issues, and facts in the case are substantially the same as those in the case of Dorian *vs.* The City of Shreveport, 28 Fed. Reporter, 287. The bonds and ordinances relating to their issuance were fully recited in that case. The several statutes vesting powers in the defendant city make up the charter by which we are to test and measure the liability of the corporation for the acts of its agents in entering into the contracts in pursuance of which the bonds held by plaintiff were executed. Dealers in municipal bonds or other such securities and evidences of indebtedness are charged with notice as to the power of the corporation to incur and bind the city for the debt evidenced by such instruments.

Under the agreement made with the several persons to whom these bonds were issued they were to do certain public work in the way of grading or otherwise improving the streets of the
44 city, and were to be paid half in cash and the balance in the ten-year bonds at par. The work was satisfactorily performed and the indebtedness evidenced by these bonds has never been paid.

The defense is in the nature of a demurrer. The defendant, offering no evidence, relies upon two grounds in law for relief: First, upon the pleas *ultra vires;* second, upon the prohibitory act of 1855, which forbids a municipal corporation to incur a debt without providing in the ordinance creating the debt the means of paying the principal and interest. The law, *ultra vires*, is a shield to the tax-payers of a corporation; when properly administered it should enable them to avoid the payment of a debt, whatever may be the form of the instruments used to evidence the liability, which has been contracted beyond the scope of the corporate powers. The reason and principle of this law lies in the fact that the power to bind the corporation for a debt carries with it the power to pay the debt out of the revenues collected from the tax-payers. No tax should be collected to pay a debt not lawfully binding on the corporation; hence the plea *ultra vires* will be good against the payment of such a liability.

Municipal corporations possess the following powers: First, powers granted in express words and such as are necessarily or
45 fairly implied from the language used in enumerating and vesting the several express grants; second, such powers as are essential to the declared purposes of the corporation. In the statutes which made up the charter of defendant city at the time these bonds were issued we find powers expressly given of a more extensive kind than usually belong to city governments. Among them we find the power "to erect such public works and buildings for the use and advantage of the town as they may deem expedient;" * * * "to give bonds and receive bonds, which shall be as effectual in law as other bonds given under the laws of the State; to levy an annual tax, not limited in amount, from 1853 until after time these bonds were issued, for the comport, improvement, and well regulating of the town." The mayor was required to sign all notes and other obligations binding on the corporation. The mayor and trustees "have power from time to time to enact and provide for the promulgation of such by-laws and ordinances, not inconsistent with the laws of the State and United States, as they may deem proper in relation to the public markets of said town, to the landings, streets, alleys, and highways therein, and to the opening, widening, draining, filling up, keeping in order, and improving the same;" * * * "to open, extend, pave, plank, macadamize, or otherwise improve and adorn
46 the streets, alleys, and wharves of the city." In Reynolds *vs.* Shreveport, 13 A., 426, the court held that the city could incur a debt for grading the streets, and in discussing the powers mentioned said they were "of the most ample description." In the face of these liberal grants to defendant city it cannot be denied that the agents of the corporation were fully authorized to contract for the public works performed by the several contractors to whom the bonds were issued. The numerous authorities cited in the Dorian case, some of them from the courts of Louisiana, show abundantly the power of the city's agents to give warrants, vouchers, or other evidences of indebtedness binding on the city to anticipate the current revenues

and to evidence the amounts due on a credit, whether it be long or short, in pursuance of contracts for public works made by the city's agents within the scope of their official powers. The defendant, among other cases, cites the case Wilson *vs.* City of Shreveport. A careful consideration of that case does not appear to avail anything for the defence against the bonds now held by plaintiff. In that case the bonds were alleged, in themselves, as commercial paper, to be a basis for recovery. Those bonds were issued in 1867. The interest was being paid on them at the time these bonds were issued, and the court decided the suit on them in 1877. In this
47 case the bonds were issued in 1869, and the city provided for and continued to pay the interest on them to any one holding them until 1878. When the bonds came into the hands of plaintiff the Wilson suit had not been filed and there was nothing known in the history of their origin, issue, or treatment by the city to depreciate or in any way dishonor them in public confidence or commerce. All the parties to the contract were in good faith, and if the city's agents had no authority to bind the corporation on such instruments for debts lawfully due public creditors neither the city nor the persons who performed public works nor the public knew or suspected the absence of such powers. It is in evidence that the city's agents at the time these bonds came into the hands of plaintiff had been for many years issuing commercial notes or bonds, and that the constituents of the corporation had from time to time been paying the principal and interest of the same. The payment of the annual interest on these bonds to any holder of them, however willingly it may have been paid, could not, if the bonds were given to evidence a debt not lawfully binding on the corporation, operate in law as a ratification of them, nor would the city be forbidden in law to deny or refuse to pay them for that reason. If the debt to evidence which they were executed was not such a debt as
48 would be binding on the corporation, then no obligation to pay it on the part of defendant ever existed, and no acts of the city officials in paying interest on them could amount to a ratification by the constituents of the corporation, but if the debt be lawfully due, it seems that the principals laid down by Judge Drummond in case Portsmouth Savings Bank *vs.* Springfield, 4 Fed. Reports, 276, may with force be applied to this case. "All questions of doubt in relation to the validity of these bonds should be answered in favor of their legality, because the city has recognized their validity repeatedly and has paid the interest on them for a series of years. Therefore, under such circumstances as these, it should appear, beyond all —, that the issue of the bonds was void." The opinion in the Wilson case shows that the bonds he sued on were given to evidence the purchase price of gas stock which the city's agents had purchased for the corporation. The plea *ultra vires* was sustained because the court thought there was no authority in the city's agents to purchase gas stock, and consequently they could not bind the corporation for the debt. If it be true that the corporate authorities were without authority to buy gas stock, it could not have been a matter of much consequence to the

court in that case whether the bonds sued on are in the form
49 of commercial paper or not. It is evident, from the reasoning of the court, that the corporation would have been liable for the debt incurred in the purchase of the gas stock but for the absence of the power to contract for such stock.

If the court had found that the city's agents were authorized expressly or by implication to bind the corporation for a debt contracted by them for the purchase price of gas stock there is nothing in the opinion of the court to induce us to believe that the mere form of the instruments used by the agents to evidence the corporation's promise to pay for the gas stock would have been sufficient to release the corporation from its lawful obligation to pay to the vendor or to his assignees the amount due them. The defendant was released in that case on the plea *ultra vires*, because the court substantially said there never was any liability incurred by the acts of the officials in purchasing such property; that there was no obligation sanctioned by law, and no recovery could be had.

But defendant contends that such bonds as these purport on their face to be, when issued for anything or to any person, are void. Conceding it to be true that the corporation had no authority to
50 execute notes or bonds for any purpose which would be entitled judicially to the protection of the law merchant, does it follow that where the city's agents and all the parties to a contract sanctioned by law agree to give and take such instruments as would be so protected that the instruments so given and now held against defendant are for all purposes void? Will the fact that those agents exceeded their power only in agreeing to give such instruments or exceeded their power merely and only in the selection of the means of evidencing the debt due the contractors invalidate and extinguish the obligation lawfully incurred by the corporation? If no debt sanctioned by the law could be incurred for such public work as the grading and otherwise improving the city's streets, then it would be a matter of no consequence to the city or to the constituents of the corporation what sort of evidence of the debt were issued, for the plea *ultra vires* would shield them against the debt; but the plea, if the debt is lawfully due and unpaid, will not protect the corporation against the debt because of an irregularity or error on the part of the city's agents in giving commercial notes instead of non-commercial vouchers or warrants.

To give such an effect to the plea, whoever may be the parties to the contract or whatever may be the irregularities in the
51 instruments used to evidence a lawful debt, would be as unwarranted in good conscience as it would be novel in the administration of justice.

In the Dorian case we held that the bonds are not void and without effect; that if they were not in law entitled to the credit and force of commercial paper they certainly, under the authorities cited, may be treated as evidences of simple obligations in favor of the persons holding them.

When we tried that suit the several suits now submitted had not been presented, the bonds in the Dorian case did not amount to an

appealable sum, and it was known that the series of bonds now sued on were outstanding against the city. Under such circumstances I thought it best to rest the court's opinion on the validity of the bonds as evidencing in favor of the *bona fide* holder a simple obligation against defendant.

In that case a written opinion sustaining the validity of the bonds in the way just stated was submitted to Judge Pardee, who certified his concurrence in the reasoning and conclusion therein.

In the Dorian case the plaintiff contended that the corporate authorities, having ample express power to provide, secure, and contract for the public work performed by the contractors to whom the bonds were issued, had also the implied power to issue to them
52 commercial instruments, and that these bonds being of such a character are in themselves a legal basis for recovery—the same point as urged in this case.

Considering that the public work for which it is agreed these bonds were issued was satisfactorily performed, that no equitable relief is sought by defendant, and that all the suits to be covered by this opinion are for appealable sums, I have less hesitancy now than I had when the Dorian case was tried in taking up and passing on the validity of these bonds as commercial instruments.

The authority of the defendant's agents to secure and provide for certain public works is found in the express powers of the corporation. Out of those powers come by implication the authority to give promissory notes binding on the corporation. The implied powers, when deducible from the interpretations the law puts upon the meaning or extent of the express powers, are as good authority for the act of an agent as are the express authorizations in the mandate.

In this State it has frequently been held that an agent authorized to buy a thing may give his principal's note for the price. In 2 Rob., 244, the court say: "If the power to purchase be established the power to give the evidence necessary to se-
53 cure the price necessarily ensues, and whether the credit be long or short is a matter of indifference." In 8 Rob. the court holds that the notes given to plaintiff being a contract made by defendant in the course of their legitimate business, no express authority is necessary in the charter to enable them to make it. "The city of Shreveport, having the right to purchase real estate under its charter, had the power, which was an implied one, to execute the note for the credit part of the purchase and to give a mortgage and vendor's privilege." 26 A., 636. "The city of Shreveport, having the authority to buy property, carries with — by implication the authority to give notes for the price." 26 A., 495.

The several cases applying to defendant city cited from this State's courts were decided when the charter powers to purchase real estate were the same as they were in the charter existing at the time these bonds were issued, and it cannot be said that the express power to purchase real estate and the implied power in the city's agents to give promissory notes for the purchase price is more clearly expressed or implied in the charter then existing than was the power

of the same agents to execute and bind the corporation on such notes for the credit price of work performed or for material furnished for improvements on the streets. The State court, in deciding that the city's agents were empowered to bind the corporation on notes
54 given for the purchase price of the thing they were authorized to buy or provide for the city, were applying well-known rules in the law of principal and agent—that is, that the power to bind the principal by giving his note for the price of the thing which he is expressly authorized to secure or furnish is implied and incidental power, and if such power is not prohibited the agent will be considered as possessing it by implication. It is known that the authorities, as well in the Federal as in the State courts, are not uniform in their rulings upon the matter we are considering; this does not exist because of any serious difficulties found in applying the law of agency, but largely upon the question as to whether the law of principal and agent, in a given case, shall be applied in considering the liability of a municipal corporation for the acts of its agents. If the power in the officials of a municipal corporation to do or procure a thing is sufficient, as in this case, it seems there can be no reason why in fixing the liability of the corporation the law of principal and agent should not be applied. In the two cases, one Britton *vs.* Police Jury, 15 Wal., the other Ray *vs.* Nashville, 19 Wal., the subject-matter of this suit was fully discussed. In the former the plaintiff, a *bona fide* holder of certain bonds, sued upon them as commercial instruments and
55 payment was resisted on the plea *ultra vires*. Justice Bradley, finding no express power in defendant to issue such bonds, said: "We have, therefore, the question directly presented in this case whether the trustees or representative officials of a parish or county or other local jurisdiction, vested with the usual power of administration in specific matters and the power of levying taxes to defray the necessary expenses of the jurisdiction, have an implied authority to issue negotiable securities, payable in the future, of such a character as to be unimpeachable in the hands of *bona fide* holders for the purpose of raising money or funding a previous indebtedness."

The commercial securities in that case were issued for the purpose of "funding previous indebtedness," and the court, not finding any express power to issue the bonds, said to issue commercial securities for such purposes does not belong to the governmental purposes of a parish, and therefore could not be considered as an implied power. The court, in so holding, announced a general principle, which forbids the authorities of municipal corporations possessing only the usual governmental powers, in the absence of express powers, to issue bonds, whether in a commercial form or not, to raise money or to fund outstanding indebtedness under the exercise of implied powers, because to issue bonds for such
56 purposes is not within the scope of a corporation's usual governmental powers; but the court, in order that the principle announced and upon which the bonds were held invalid should not be extended too far, said: "We do not mean to be understood that it

requires in all cases express authority for such bodies to issue negotiable paper. The power has frequently been implied from other express powers granted. Thus it has been held that the power to borrow money implies the power to issue the ordinary securities for its repayment, whether in the form of notes or bonds payable in the future. So the power to subscribe for stock in a railroad or to purchase property for a market-house and other like powers which cannot be carried on without borrowing money or giving obligations payable in the future have been held sufficient to raise the implied power to issue such obligations."

In Ray *vs.* Nashville, 19 Wal., 468, Justice Bradley, delivering the opinion, held that defendant corporation, possessing, as it did, only the usual governmental powers, could not issue commercial notes or otherwise bind the city for borrowed money, because no such power existed among the implied powers of the corporation; that the power to borrow money was not germain to the powers ex-
57 pressly given and was not a power necessary to carry out the purposes of the city government.

In reading the opinion and conclusion of the court it will be apparent that it could not have been a matter of consequence to Justice Bradley or to the three justices who agreed with him whether the bonds sued on in the Britton case or the drafts or notes in the Ray case were in a commercial or negotiable form or not; for them it seemed to be enough to know that the defendant corporation had no power to issue funds to take up outstanding indebtedness or to borrow money, and could not be bound by the officials to pay it, whatever may have been the sort of instruments used between the parties. In the Ray case the court was composed of eight judges; four of them dissented. Among them was Justice Hunt, whose written opinion is reported, in which he said: "I hold it to be well established by the authorities that a municipal corporation may borrow money for the legitimate use of the corporation, and that it may issue its notes for the same, unless expressly prohibited by its charter or by some statute from doing so. The proposition that it cannot borrow money unless expressly authorized to do so is, in my opinion, unsustained by sound authority;" "that securities thus signed by corporations are subject to the rules of commercial law, when held by *bona fide* holders, has been repeatedly held by this court." Justice
58 Hunt thought Ray was not a *bona fide* holder before maturity, and agreed to have the case remanded for the purpose of letting in equitable defenses. On the other issues mentioned the court was evenly divided.

Whatever conflict of opinion there may be among the courts and judges as to the power of the agents of a municipal corporation, possessing only the usual governmental powers to bind their constituents by the issuing of commercial bonds or any other evidences of indebtedness for borrowed money or on bonds issued to take up outstanding indebtedness, we are, after a very careful and general examination of authorities, unable to find a single case in which the power of the city's agents to evidence the credit price of a thing which

they were authorized to secure, provide for, or purchase was judicially denied.

In Desmond *vs.* Jefferson, 19 Fed. R., 486, plaintiff sued on bonds issued for the purchase price of a fire engine—alleged them as commercial securities to be a legal basis for recovery. Defendant resisted payment on the plea *ultra vires*. The defendant city possessed the usual governmental powers. Among these powers was the power "to organize a fire department." The court thought the defendant, having the power to organize a fire department, had
59 ample power to buy an engine and give such securities for the purchase price, and said: "There is no case to be found where, if the power is given by specific grant or by necessary implication to provide for or buy the thing, the courts have held that this character of paper is not obligatory upon the municipality."

In 1 Wal., 273, the defendant city had power to subscribe to a city railway company "as fully as any individual." The corporation was sued on negotiable bonds issued for subscription to the company and resisted payment on the ground that her agents were not authorized to issue the negotiable bonds. The court said the power to subscribe was a power to create a debt, and consequently to give evidence of the debt. The power to subscribe in such a way was given, and if they legally owed a debt it follows that they can give a bond for it.

The power in that case was broadly given. So in the pending case it would seem that the power to pass all ordinances not inconsistent with the laws of the State which the city's agents may deem proper in relation to such public works as were performed by the contractors to whom these bonds were given, considered with the fact that the defendant's agents could collect taxes, unlimited in per centum or gross sum, annually for the well regulating of the
60 town, should, we think, enable the authorities to secure such public works in any way that agents are usually empowered to act for their principals. The weight of authorities upon the power of a municipal corporation to execute bonds to be placed on the market for the purpose of raising money to be expended by the city's agents or for the purpose of funding outstanding indebtedness seems to — generally against the exercise of the power, except in cases where the power is derived from legislative authority, expressed or implied. The reason for such ruling is well known to be in the fact that municipal corporations are established to enable the people residing in towns and cities to have the benefits of local government. Unlike trading or business corporations, their powers, unless otherwise directed by express or implied grant, should be and are in law, as well as in public policy, limited to such as are governmental or administrative in their nature or scope—to such as are necessary to conserve the purposes of their municipal organism.

So far as the contractors to whom these bonds were originally given are concerned with their issue, it cannot be said that they were issued for the purpose of borrowing money or for the purpose of funding outstanding indebtedness of the city, for it is not
61 denied that they were given to the contractors in pursuance

of an agreement to the effect that one-half of the amount due them for the public work should be paid in cash and the balance should be evidenced as a debt against the city by ten-year negotiable bonds, some of which are now held by plaintiff. The contractors agreed to take commercial bonds or securities, and as such securities are known to be more valuable in commerce than instruments not protected by commercial law, it may be fairly presumed that the fact that such bonds were to be given to them instead of non-commercial securities enabled the contractors to perform the work, and entered largely, if not in a controlling way, into their ability, motive, and reason for undertaking the public works. If it be conceded that the city's agents had power to incur a debt sanctioned by law against the corporation for such works as the contractors in this instance faithfully furnished and performed, it does not seem inconsistent with public policy nor at variance with the jurisprudence of Louisiana or the decisions of the United States courts to hold that such authori-es or agents are authorized in the implied powers of their mandate to evidence such a debt by giving such commercial notes or bonds as are now held by plaintiff. In reaching our conclusion in the Dorian case, as well as in this
62 suit, we have kept in mind the rule which seems to be generally observed when the Federal courts are employed in interpreting the powers of municipal corporations to lawfully incur a debt—that is, that doubts, if there be any, as to the power of the city's agents to incur the particular debt should be charged to the obligee, as in this case the plaintiff.

But in deciding now in favor of the validity of these bonds as commercial securities it cannot be said that we are imposing upon or enforcing against the constituents of the corporation a debt doubtful in its origin, or one not lawfully incurred, or one not justly due to somebody, because it is clear enough that the debt is unpaid and that the city's agents had ample power to ordain and direct that the public work should be done, and to legally bind the corporation for the debt—that is, for the price of the public work.

Judgment for plaintiff.

(Sig.) ALECK BOARMAN, *Judge.*

63 *Minutes of Court.*

UNITED STATES OF AMERICA, *Western District of Louisiana:*

This being the third Monday of the month of July, A. D. 1886, and by law the first day of the July term of the circuit court of the United States for the fifth judicial circuit and western district of Louisiana, the same was duly opened by the marshal.

Present: His honor Aleck Boarman, judge, presiding.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112.

Motion for recusation filed & same assigned for argument on Tuesday, July 20th, 1886, in all these cases, from 104 to 112.

THURSDAY, *July 29th*, 1886.

Court met pursuant to adjournment.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112.

On motion of T. Alexander, attorney for defendant, the motion filed in the above-named cases on Monday, July 19th, 1886, be, and the same are hereby, withdrawn. Agreement of counsel in these cases filed and made part of the record.

FRIDAY, *July 30th*, 1886,

Court met pursuant to adjournment.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112, Consolidated.

Answer & plea of prescription filed.

64 UNITED STATES OF AMERICA,
Western District of Louisiana:

SHREVEPORT, MONDAY, *February 21st*, 1887.

This being the third Monday of the month of February, A. D. 1887, and by law the first day of the February term of the circuit court of the United States for the fifth judicial circuit, western district of Louisiana, the same was duly opened by the marshal.

Present: His honor Aleck Boarman, judge, presiding.

WEDNESDAY, *March 2nd*, 1887.

Court met pursuant to adjournment.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112, Consolidated.

These cases, as per assignment, came on to be heard. A jury having been waived and both sides having announced themselves ready for trial, the cases were proceeded with.

Note of Evidence.

Plaintiff offers in evidence—

1st. All the evidence offered on the trial of the case Simon Levy *vs.* The City of Shreveport.

2nd. Acts of the Legislature of Louisiana relative to the city of Shreveport, viz: Acts of 1839, page 200; acts 1850, acts 1853, page 198; acts 1859, page 121; acts 1866.

3rd. Ordinance of the city of Shreveport, of date July 3rd, 1866.

65 & 66 4th. Ordinance of the city of Shreveport, of date April 4th, 1871.

5th. Forty-two (42) bonds of the city of Shreveport.

6th. Note of evidence taken on the trial of the case Simon Levy *vs.* The City of Shreveport, filed February 24th, 1885.

Testimony closed and case submitted.

MONDAY, *March 7th*, 1887.

Court met pursuant to adjournment.

JOHN B. CROOKS
vs.
THE CITY OF SHREVEPORT. } Nos. 110, 112, Consolidated.

It is ordered by the court that there be judgment in favor of the plaintiff, John B. Crooks, against the defendant, The City of Shreveport, for amounts claimed in the petitions, & interest.

67 *Clerk's Certificate.*

CLERK'S OFFICE.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 66 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial in the cases of John B. Crooks *vs.* The City of Shreveport, Nos. 110 & 112 (consolidated) of the docket of the said court.

Returned in obedience to writ of error, the original of which is hereto annexed.

Witness my hand and the seal of said court, at the city of Shreveport, this 23rd day of May, A. D. 1887.

[Seal of U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

Judge's Certificate.

I, Aleck Boarman, — United States for the western district of Louisiana, do certify that John W. Wheaton, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

68 Given under my hand, at the city of Shreveport, in said district, this 23rd day of May, A. D. 1887.

ALECK BOARMAN, *Judge.*

Clerk's Certificate.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that Aleck Boarman, whose name is signed to the foregoing certificate as United States judge for the western district of Louisiana, was at the time of signing said certificate and is now the judge of said court.

Witness my hand and the seal of said court, at the city of Shreveport, this 23rd day of May, A. D. 1887.

[Seal of U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

69 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judge of the circuit court of the United States for the fifth circuit, western district of Louisiana, Greeting:

Because that in the records & process, and also in the rendering of judgment in a suit before you or some of you, between the City of Shreveport, La., plaintiff in error, and John B. Crooks, a citizen of the State of Arkansas, defendant, a manifest error has intervened, to the great damage of the said plaintiff in error, as in his complaint stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full & speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record &
process in the suit aforesaid, with all things concerning them,
70 and this writ, so that you have the same before the Chief Justice and associate justices of the Supreme Court of the United States on the second Monday in October next, at Washington, being present seat of the National Government, that, the record & process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this the 14th day of March, in the year of our Lord 1887, and of the Independence of the United States the one hundred & eleventh.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

71 [Endorsed:] No-. 110 & 112, consolidated. City of Shreveport *vs.* John B. Crooks. 12. Writ of error. Filed March 14, '87. J. W. Wheaton, cl'k.

Endorsed on cover: W. Louisiana C. C. U. S. No. 1122. The City of Shreveport, Louisiana, plaintiff in error, *vs.* John B. Crooks. Filed October 7, 1887.